

**AMENDMENT 1 TO THE JULY 1, 2007, MEMORANDUM OF UNDERSTANDING
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE CALIFORNIA
DEPARTMENT OF TRANSPORTATION CONCERNING THE STATE OF
CALIFORNIA'S PARTICIPATION IN THE SURFACE TRANSPORTATION
PROJECT DELIVERY PILOT PROGRAM**

THIS AMENDMENT TO THE JULY 1, 2007, MEMORANDUM OF UNDERSTANDING (hereinafter "Amended MOU1"), made and entered into by and between the FEDERAL HIGHWAY ADMINISTRATION (hereinafter "FHWA"), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION (hereinafter "USDOT"), and the CALIFORNIA DEPARTMENT OF TRANSPORTATION (hereinafter "Caltrans"), a department of the State of California, hereby provides as follows:

WITNESSETH:

Whereas, Section 6005(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59) (hereinafter "SAFETEA-LU"), codified as Section 327 of amended Chapter 3 of Title 23, United States Code (23 U.S.C. 327), establishes a Surface Transportation Project Delivery Pilot Program (hereinafter "Pilot Program") that allows the Secretary of the United States Department of Transportation (hereinafter "USDOT Secretary"), to assign, and a State to assume, the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (hereinafter "NEPA"), and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law with respect to one or more highway projects within the State; and

Whereas, on or about July 1, 2007, a Memorandum of Understanding (hereinafter "Original MOU") became effective between the FHWA and Caltrans under which all of the Secretary's responsibilities under NEPA and other Federal environmental laws (except for such responsibilities for categorical exclusions that are subject to a June 7, 2010, Memorandum of Understanding) concerning highway projects within the State of California were assigned by the FHWA to, and assumed by, Caltrans; and

Whereas, 23 U.S.C. 327(i)(1), as enacted in SAFETEA-LU, required that the Pilot Program terminate 6 years after the date of enactment of SAFETEA-LU, which was enacted on August 10, 2005; and

Whereas, section 13.1.1 of the Pilot Program MOU provides that Caltrans participation in the Pilot Program shall terminate on August 10, 2011, and that all responsibilities that have been assumed by Caltrans will, on such date, be reassumed by the FHWA; and

Whereas, section 2203(c) of the Surface Transportation Extension Act of 2010, Part II, Public Law 111-322, amended 23 U.S.C. 327(i)(1) to require the Pilot Program to terminate 7 years after the date of enactment of SAFETEA-LU; and

Whereas, the FHWA and Caltrans agree that once Caltrans has begun exercising the Secretary's NEPA responsibilities for a particular project under the Pilot Program, the Secretary's responsibilities have been assigned by the Secretary, and assumed by the State, for that project; and

Whereas, the FHWA and Caltrans agree that the Pilot Program's termination under 23 U.S.C. 327(i)(1) prevents the Secretary from assigning, and the State from assuming, the Secretary's environmental responsibilities for any additional projects;

Now, therefore, the FHWA and Caltrans agree as follows:

1. Section 3.2.5 is clarified that the required language to be inserted into the listed environmental documents shall be inserted on the cover page.
2. Section 3.1.2 and all other references to the CE assignment MOU are clarified by reflecting the new date for the Section 6004 CE assignment MOU to be June 7, 2010.
3. Sections 6.2.2, 6.2.3, and 6.2.5 are amended to clarify that notification will be made to the FHWA Office of Chief Counsel located in Sacramento, California.
4. Section 11.1.4 is amended by referring to the FHWA in lieu of the FHWA California Division Office.
5. Sections 13.1.1 through 13.1.3 of the Original MOU shall be null and void, and the following provisions shall apply:
 - A. As provided at 23 U.S.C. 327(i)(1), Caltrans' participation in the Pilot Program shall terminate on August 10, 2012, which is 7 years after the enactment of SAFETEA-LU.
 - B. Beginning August 10, 2012, Caltrans shall not exercise the responsibilities the Secretary has assigned, and Caltrans has assumed, under part 3 of the Original MOU for any additional highway projects for which Caltrans has not initiated the review process under NEPA.
 - C. For purpose of this Amended MOU¹, Caltrans shall be considered to have initiated the NEPA review process for a project in the following circumstances:
 - i. For projects requiring an environmental impact statement (EIS), Caltrans has published a notice of intent, as required under 40 CFR 1501.7 and 23 CFR 771.123; or
 - ii. For projects undergoing an environmental assessment (EA), or for projects where a categorical exclusion (CE) is expected, Caltrans has reached the "begin environmental studies" milestone, or has, in Local Assistance cases, signed a completed Preliminary Environmental Studies (PES) form.
 - D. In the event that Congress enacts legislation extending the termination date specified in 23 U.S.C. 327(i)(1) beyond August 10, 2012, the termination date specified in sections 5.A and 5.B above shall automatically be deemed to be replaced with the appropriate termination date specified in Federal law. Absent such an extension by Congress, beginning August 10, 2012, the FHWA shall reassume the responsibilities


that have been assumed by Caltrans under part 3 of the Original MOU for any project that does not meet the criteria in 5.C above.

- E. All of the provisions of the Original MOU, except as provided herein, shall continue to apply to those projects for which Caltrans has initiated a review under NEPA pursuant to Section 5.C. above.
- F. Caltrans specifically acknowledges and reaffirms California's waiver of Eleventh Amendment immunity provided in section 4.3.1 of the Original MOU with respect to those projects for which Caltrans has begun to exercise the Secretary's environmental responsibilities prior to August 10, 2012, and further reaffirms, for the acts covered by the present waiver, that Caltrans shall be solely liable and solely responsible for the decisions Caltrans will make with respect to such projects as provided in sections 3.4.1 and 6.1.1 of the Original MOU.
- G. Section 13.2.1 of the Original MOU shall be modified by replacing the date January 1, 2009, with the date January 1, 2012, in both places where the January 1, 2009, date appears.

- 6. Section 13.2.3 of the Original MOU shall be modified by:
 - A. replacing the date July 1, 2008, with the date July 1, 2011;
 - B. replacing the date January 1, 2009, with the date January 1, 2012; and
 - C. replacing the date September 30, 2008, with the date September 30, 2011.

- 7. As soon as practicable following the potential reauthorization of SAFETEA-LU by the United States Congress, the FHWA and Caltrans shall review the Original MOU, this Amended MOU1, and other applicable MOU amendments, to determine if any further changes are required or desirable as a result of an possible changes in legislation.

IN WITNESS THEREOF, the parties hereto have caused this Amended MOU1 to be duly executed in duplicate as of the date of the last signature written below.



Victor M. Mendez
Administrator
Federal Highway Administration

Date: 08/08/2011



Malcolm Dougherty
Acting Director
California Department of Transportation

Date: 8/10/2011